SUBSTANCE OF AN ARGUMENT

OF

SAMUEL F. VINTON,

FOR THE DEFENDANTS, IN THE CASE OF THE

COMMONWEALTH OF VIRGINIA vs. PETER M. GARNER AND OTHERS,

FOR AN ALLEGED ABDUCTION OF CERTAIN SLAVES.

Delivered before the General Court of Virginia, at its December Term, A. D. 1845.

Mr. VINTON said:

May it please your Honors:

I cannot but regret that my learned friend (the Hon. JOHN M. PATTON,) who opened this case for the Commonwealth of Virginia, has somewhat impaired the value of so good an argument, by the introduction into it, both at its commencement and conclusion, of a topic so very foreign to the subject now under consideration. To all else in his argument, I listened with that pleasure and delight, which high intellectual effort never fails to inspire. It will be understood, that I refer to what was said by him on the subject of slavery, and of the correspondence now going on, and not yet brought to a close, between the Executives of the two States, making mutual demands of certain persons as fugitives from justice. These are matters not before the Court, and their connection with the case now before us, is not very apparent.

If the argument of my learned friend had been an address to a popular assembly, or even before a Jury of the country, I should have been at no loss to understand the object in bringing these topics into it. But when they are addressed to this grave and dignified tribunal of Judges, sitting here to decide a naked question of law, I am unable to perceive their relevancy, or in what way they can aid the Court in coming to a right decision of the case. Much has been said, and eloquently, by the learned counsel in praise of the institution of Slavery, and in derogation of the abolitionists. I did not come here, may it please your Honors, to engage in those questions that are at issue between the slaveholders and the abolitionists—I am not now called upon to assail the one or defend the other—the case before us has nothing to do with either—and I cannot permit myself to be drawn aside, or seduced into a discussion of this sort by any thing that has been, or can be said, on that subject. I have the same remark to make about the correspondence between the Executive of Virginia and of Ohio. The Governor of Ohio has seen fit to send me here to argue the case now before the Court, and to protect, as well as I may, those rights of sovereignty and of soil that are brought in question in it. But he has not solicited my aid in his correspondence with Virginia. If he be right, he needs no defence from me. If he be wrong, he best knows how to defend himself. And whether he be right or wrong, I have no authority to speak for him here before this tribunal, about a matter which it is not called upon to decide, and over which it has no jurisdiction or control. I shall also pass over in the same way all that was so eloquently said about the comparative power and prowess of the people of Virginia and Ohio. I would fain trust in

God, the day may never come, when we, or our posterity, shall decide on the battle-field whether Virginia be able to dictate law to Ohio, or Ohio to Virginia. All such speculation is worse than profitless, and can establish nothing. If the signs of the times do not greatly deceive us, the day is not far distant when the people of both may be called upon to stand side by side in the presence of the common enemy of the country,—when ample scope will be given to each for the exhibition of their valor and prowess on fitter fields than those of civil strife. If this call be made, the established valor of Virginia, the deeds she has done, all her history assures us what she will do for her country. It will then be seen whether Ohio will do her duty also. Firm as is my faith that she will not be found wanting in the hour of trial, I shall nevertheless promise nothing for her,—much less will I, here in this place, offend against good taste by vaunting any thing in her behalf.

I will now proceed to the argument of the case before the Court.

The indictment contains three charges, or counts, founded upon different sections of the Criminal Code of Virginia—each section creating a distinct offence. But the facts found by the jury in their special verdict rendered on the trial of the case, show that the proof is applicable to one of the charges only. I shall therefore confine my remarks to it alone. That count alleges that the defendants, Garner, Thomas, and Loraine, did feloniously carry and cause to be carried out of the Commonwealth of Virginia into the State of Ohio, six negro slaves, without the consent of John H. Harwood, their owner, with intent to defraud him of the use, enjoyment, property and possession of said slaves, contrary to the Statute of Virginia in such case made and provided. The verdict, in the first place, finds the existence of certain laws relating to the title to, and jurisdiction over the place where the act in question was done—which will be noticed in the course of my argument. The verdict, in the next place, finds that the Defendants were at the time when this act was committed, citizens of Ohio, residing in that State, about four miles back from the Ohio river. That on the night when the act was committed, the Defendants, with some other persons, came from their residence to the river on the Ohio side, and going down under the bank, remained there for some time, when six negro slaves, the property of said Harwood, came across the river from the Virginia side, in a canoe, and landed it obliquely against the Ohio shore, running the bow upon the beach. That the Defendants, and those in company with them, went down to the canoe as it struck the shore, and without entering it, stepped into the water at the bow, and assisted in taking from it some bags and articles of clothing which lay in that part of the canoe. That the Defendants, and their companions, taking up these articles, were proceeding up the bank of the river, in company with the slaves, when certain persons, who lay in ambush, on the top of the bank on the Ohio side, rushed down upon them, and seizing the Defendants, carried them forcibly across the Ohio into Virginia, where they were held in custody, indicted and tried for the offence above specified.

The verdict further finds, that the slaves on that night left their master in Virginia, without his knowledge or consent. The jury also found that when the Ohio river is at that stage which the boatmen on it call low water, the depth of water on the bars, in the channel, is from 17 to 20 inches. That at extreme low water, or where the water has once been known to be, the depth on the bars in the channel was eleven inches only. That on the night of the 9th of July, 1845, when this transaction took place, the water on the bars in the channel was 39 inches deep. That the average depth of water in the channel, on said bars, for the whole year, is six feet, or thereabouts.—That taking the whole year round, one year with another, the water for nine months, or thereabouts, would

be higher than it was on said night of the 9th of July, and for three months, or thereabouts, lower than it then was.—That below the banks, the shores and bottom of the river are for the most part a gradually inclined plane, converging towards the channel, and that at the place where said canoe was landed, the edge of the water at extreme low water is some 50 or 60 feet in a right line measuring on the beach, below where it was at that place on said night of the 9th of July.—From these facts, the question presents itself, Did these Defendants, in aid of the escape of these slaves, pass over the territorial limits of Ohio, and enter within the limits and jurisdiction of the State of Virginia?

If they did not, then it is admitted by the learned Counsel who oponed the case, that they are not amenable to the laws of Virginia.—Whether they did so pass out of the limits and jurisdiction of Ohio, is the sole question that I intend to discuss.

This presents a simple question of boundary between the two States, and must be settled in the same way, and by the same law and principles that would govern it, if the present were an indictment against the Defendants for stealing a bale of merchandise at the place where these acts were done by them. And I cannot but regret exceedingly that this question, so important to the State of Ohio, should have arisen out of a transaction having any connexion with slaves or slavery, since this adventitious circumstance creates a prejudice against the case, and gives it an outward appearance of being something different from what it in reality is, and which the mind has a natural tendency to associate with the question that does in fact arise. I am sure I should do great injustice to this Honorable Court, if I were to imagine it possible its judgment could be, in the least degree, influenced by the outward and accidental form in which this question is presented. Before, however, proceeding to the argument of the question of boundary, I beg leave to suggest, that another important question might be made in advance of it, which I propose to state, but not to argue. It is, whether where the crime consists (as is alleged in this Count of the indictment,) in carrying slaves *out of one State into another*, the Courts of either State have jurisdiction of the offence? Or whether the trial and punishment of it, does not exclusively belong to the jurisdiction of the Federal Courts? The principles laid down and settled by the Supreme Court of the United States in the case of Prigg *vs.* the Commonwealth of Pennsylvania (16 Pet. 539) raise, to say the least of it, a serious doubt whether the sole power to prescribe the punishment for such a case, is not vested in the Congress of the United States, and whether, as the law now stands, an indictment can be found, or punishment inflicted, except it be provided for by the act of Congress of the 12th of February, 1793, entitled "An Act respecting Fugitives from Justice, and persons escaping from the service of their Masters." (See 2 Vol. L. U. S. 331.)

Passing over this enquiry, the question returns, was this act done within the limits or jurisdiction of Virginia? I shall maintain it was not, and shall place the negative of this proposition on several grounds.

The first ground upon which I shall maintain the negative of this proposition is, that the Supreme Court of the U. States has so decided it. I shall give that decision a distinct consideration by itself, and shall then present the case on its own principles, independently of that decision. The claim now set up for Virginia is, that her territory and jurisdiction extend to the top of the bank on the Ohio side of the river. If that ground be maintainable, then I admit the decision must be in favor of the jurisdiction of the Court over these Defendants; but it is equally obvious that, if such be the fact, then the case laid in the indictment and specified in the Statute of Virginia, has not been made out—that is to say, the slaves, if it be so, were *not carried out of Virginia into Ohio;* which is the substantial fact alledged in this count and in the Statute on

the title to the country beyond the Ohio, and its true history, had been put into the record in that case, so as to bring it within the reach of the Court, and call for a decision upon it, the judgment of the Court must have been, that the middle of the channel is the boundary. All the parties to that case, both the Court and bar assumed, without any historical investigation in the Court below, that Virginia was *the original proprietor of the country beyond the Ohio River;* and that the question of boundary was to be decided by *the laws of Virginia,* and *by her deed of cession* to the United States. The case came up to the Supreme Court of the United States made up on this hypothesis, and in that Court its decision was predicated upon the record, as it was presented to it. Proceeding on this assumption, it was by a powerful analysis of those laws and of the deed of cession, for which Chief Justice Marshall was so eminently distinguished, that he came to the conclusion, that the low water line of the river was the boundary. In this way, the case was presented in the best possible aspect for a decision the most favorable to the claims of Virginia. The erroneous assumption on which the precise decision turned, therefore, by no means weakens, but in fact strengthens the weight of the authority of that case as against the States of Virginia and Kentucky. Having assumed that Virginia had the original title to the country beyond the Ohio prior to the deed of cession, the learned Judge proceeds to lay down the foundation principle on which the decision rested, in the following words, viz: "When a great river is "the boundary between two nations or States, "if the original property is in neither, and "there be no convention respecting it, *each* "*holds to the middle of the stream.* But when, "as in this case, one State is the original "proprietor, and grants the territory on one "side only, it retains the river within its own "domain, and the newly created State ex-"tends to the river only. The river, however, "is the boundary." 5 Wheat. 379.

The principle here stated shows clearly that the decision rested wholly on the assumption that Virginia was the original proprietor of the ceded Country, and that if it was erroneous, as I shall endeavor to prove it was, then the middle of the river is the boundary. The learned Counsel for Virginia maintains *that the bank* of the river, as contradistinguished from the *water edge* at low water is the boundary. This distinction between the *bank* or *shore* and the *water* which composes the river at that stage which the Court denominates the "*permanent river*" did not escape the attention of the Supreme Court in the case on which I am now commenting. Judge Marshall bestowed especial care upon it. He begins by citing the language of the deed of cession. He says, "she "(Virginia) conveys all her right to the terri-"ry situate lying and being to the North "West of the river Ohio." And this territory "according to express stipulation is to be "laid off into independent States. These "States then are to have *the river itself,* where-"ever that may be for their boundary. This "is a natural boundary and in establishing it "Virginia must have had in view the con-"venience of the future population of the "Country." 5 Wheaton 379. And further on at page 380 he says, "Wherever the river "is a boundary between States, it is the main, "the permanent river, which constitutes that "boundary; and the mind will find itself em-"barrassed with insurmountable difficulties "in attempting to draw any other line than "the low water mark." In the last sentence of the opinion, he makes a direct and express distinction between a *river* and its *shore* and says the States beyond the Ohio were to own the shore of the river. He says "the shores of a river border on the water's edge." 5. Wheat. 335. In other words, the one is land and the other water. If therefore you have a boundary by the *river* it is a *water line* of division—if by the shore, it is a *land boundary* as contradistinguished from a water line, and in that case, the top of the bank would, pre-

bably, be the boundary line. In the passages cited and throughout the opinion of the Court, the distinction is kept up between the river and its bank—between a water line of boundary and a line on dry land. It maintains that the deed of cession granted the Country "to the North West of the *River Ohio.*"—That is to say to the North West of the *permanent water* of the river, and not to the North West of the river *bank*, as is now contended for. And as a deduction from this doctrine, he goes on to lay it down, that this low water mark is a fixed line of boundary. He uses these words, "the same tract of land cannot "be sometimes in Kentucky and sometimes in "Indiana, according to the rise and fall of the "river. It must be always in the one State, "or the other." 5 Wheat. 382.

But that eminent Judge did not content himself with resting on the strict meaning and effect of the words of the deed. He goes further, and places his interpretation of it on broad and enlightened views of public policy. He remarks that Virginia provided for the erection of independent States in the ceded Territory, and that in fixing their boundary, she "must have had in view the convenience "of the future population of the country." And on this topic he also adds, "in great "questions which concern the boundaries of "States, where great natural boundaries are "established in general terms, with a view "to public convenience and the avoidance of "controversy, we think the great object, where "it can be distinctly perceived, ought not to "be defeated by those technical perplexities "which may sometimes influence contracts "between individuals."

With the permission of your Honors, I will now make a practical application of the liberal and enlightened views of the Court. In the short interval of time that has elapsed since the date of the deed of cession, three great States have risen up on the North Western shore of the river, whose aggregate population, even now, exceeds that of the whole confederacy when the deed of cession was executed; and which eventually, in the fullness and maturity of their development, will contain a greater number of people than the whole Union at this day. Every thing, there, is yet in its infancy. But already towns and cities have every where sprung up on the river shore, and on all the lines of interior communication with it. That river is already the channel and thoroughfare of a surprisingly active internal commerce. On its shore, on the *identical ground* that is now in dispute, must be annually laid down, the accumulated surplus product of the active industry of millions of people, as the point from which to take its departure for the markets of the world. But this is not all; the great and important business of transhipment, with the ten thousand contracts incident to it, must forever be done on this very disputed shore. Upon it also must be landed, for distribution in the interior, all those return supplies of merchandise and commodities which minister to the wants and comforts of this great population. Look, for example, at the City of Cincinnati, and picture in the imagination, what may be seen there any day in the year—her lovely port crowded with steamers, and almost innumerable other water craft, with their rich and varied cargoes—her wharves crowded with busy, bustling people, and with every variety of merchandise—where contracts are making, and property changing hands, almost every minute of the day—*all on this disputed ground;* and is it not a matter of vital moment, that it should be known with certainty by what law these people are to be governed, and their contracts regulated, while there in the transaction of their daily business? Can any one fail to perceive the absolute necessity of a strong and effective local police, and a code of police laws to control and keep in subjection the loose and disorderly masses of men thus congregated together from the most distant parts of the country? Can it promote the convenience of the people of Ohio, or of those who come there to do business, that the wharves

and shores of the river, and the water-craft lying there, shall be governed by such police laws as Kentucky might choose to make? That the contracts made at the Ohio shore, and on the boats attached to it, shall be governed by the laws of Kentucky or Virginia, of which they know nothing, and were not even thought of when they entered into them? That the citizens of Ohio, while thus engaged, should be there arrested and carried into imprisonment by the officers of the opposite States, their contracts subjected to, and their persons punished by laws made by men in whose election they have had no voice, and over whom they can exercise no control or influence! Or would not these things, in any community whatever, be justly regarded as an intolerable grievance! Go into the City of Cincinnati, or into any town on the Ohio, and ask its business inhabitants, what part of all their public streets, or places of resort, they could least afford to give up to the control of the State on the opposite bank, and they would tell, with one united voice, that the wharf on the river, and the shore of the river, were the last that they could surrender. And of what use, let me enquire, would this power be to you, if you had it; but to keep up and nourish an everlasting enmity between you and us, and administer food to a never-dying feud! Does it comport with that regard for "the convenience of the future population" which the venerable Chief Justice says Virginia must have had in view in providing for the erection of New States on the Ohio! Is it consistent with this statesman-like and benevolent intention of Virginia, that if the people of the new States have occasion to erect a wharf at the water edge—to carry a rail way to the river—to lay down a suction pump to draw up supplies of water for their steam machinery, or for the daily wants of the inhabitants of their towns—in a word, to approach the water and use it for a thousand new and nameless purposes, which the fast multiplying pursuits and wants of society, in the progress of that civilization they fondly hope to attain, will render indispensable to their comfort and prosperity, that you should have the power, at your will, to stop them all! Like all unfit, and misplaced power, it would be a curse both to you and to us, if you had it. It is true, that if you could make a final decision of this question in your favor, and should do it, you would, for the moment, quicken into life, a wild spirit of speculation. For who can doubt but that so soon, and as fast as steam would carry them to its shores, multitudes of adventurers would rush there to lay down your land warrants upon the river shore between high and low water mark on the whole line of the border States! I solemnly declare as a citizen of Ohio, that if you were to offer us this power over the Virginia shore, I would not take it as a gift.—I would not accept a power that would bring with it perpetual annoyance, collision, and never-ending controversies between those who are neighbors and whose interest it is, and ever must be, to be friends.

Before passing from this topic to the next head that I propose to discuss, permit me, to enquire, whether, in case you hold that Virginia has a right to make arrests on the Ohio shore—that her laws both civil and criminal extend there, you will not thereby involve your own people, on your own side of the river in a like responsibility to the laws and jurisdiction of the State of Ohio! In a word, whether a regard to your own policy and convenience would not admonish you to abstain from such a decision! I shall endeavor to show that place the actual boundary where you may,—at the top of the bank—at the medium stage of the water—at low water mark—or in the middle of the channel,—and Ohio has a right to do on the Virginia shore, whatever Virginia has a right to do on the Ohio side. When Virginia passed her act of Assembly in December 1789, to enable the people of Kentucky to form a Constitution and become a State, she proposed to Kentucky certain conditions for her assent, which were to be binding on both parties. One of

those conditions related to the Ohio river, and proposed that its use and navigation along its course in passing Virginia and Kentucky, should be free and common to the citizens of the United States, and that the *resp ctive jurisdictions* of those States should be *concurrent with the States possessing the opposite shores of the river?* This condition was assented to by the convention that formed the constitution of Kentucky, and the admission of Kentucky into the Union was an act of assent thereto by Congress. And thus validity and effect according to the form prescribed by the Constitution of the United States was given to this compact between the two States, and is binding and obligatory on both. That condition or compact is in these words viz: "The "use and navigation of the river Ohio, so far "as the territory of the proposed State (Ken- "tucky) or the territory which shall remain "within the limits of this commonwealth "(Virginia) lies thereon, shall be free and "common to the citizens of the United States, "and the *respective jurisdictions* of this com- "monwealth and of the proposed State on "the river as aforesaid shall be *concurrent* "only *with the States that may possess the op-* "*posite shores of the said river.*" (See Henning's Virginia Statutes 13 Vol. page 19 Sec. 11.) By every known rule for the interpretation of Statutes, the word "river Ohio" found in this compact means the same identical river neither more nor less than is meant by "Ohio River" in the act of cession passed by Virginia six years before. And here permit me, to enquire, what is jurisdiction? It is the right of dominion—of sovereign command over any place—the right to make laws for it and carry them into execution; and all these rights where there is no convention respecting them are exclusive of the rights of all others. See Vattel Book 2, Chap. 7, Sec. 83-84.

The lexicographers define the word *concurrent* to mean, "joint and equal, existing together and operating on the same objects."—It follows then as an irresistable conclusion from a grant of *concurrent jurisdiction* that if the river with the Virginia jurisdiction extends on the Ohio side to the top of the bank, it extends with the Ohio jurisdiction to the corresponding place on the Virginia shore—that if Virginia can make laws for the river beach on the Ohio side between high and low water mark—can serve process there—can seize persons standing there and try them in her Courts for acts done there, so can Ohio do the same things on the Virginia shore. Need, I ask, whether the citizens of the City of Wheeling—of the Town of Parkersburg, or the people of Virginia who dwell on the banks of that river, would be satisfied or ought to be, with a construction of this compact between Virginia and Kentucky, that will bring the laws of Ohio to operate on their persons, conduct and contracts, while engaged about their daily and ordinary business at their Steam Boats, wharf boats, and other craft lying at their shore; and not only that, but when they are on dry land between high and low water mark on their own side of the river? Nor need I say, that it could not have been understood by those who made this compact that the limits of the river were as broad as is now contended, or that compact would never have been proposed without qualification or restriction upon the jurisdiction of the opposite states.

It has not been claimed in the argument for Virginia, nor can it be successfully, that Virginia by virtue of this grant of concurrent jurisdiction, acquired any rights beyond her territorial boundary wherever that may be. It must be remembered that Virginia and Kentucky were the grantors of this jurisdiction—the States on the opposite side are the Grantees—the latter have granted nothing—they must themselves become grantors before Virginia and Kentucky can come over the line of their boundary, wherever that may be, which was created by the deed of cession. And thus we are brought back again to the question already discussed, and already settled in the case of Handley's lessee vs. An-

thony, viz: where is the boundary by virtue of that cession?

I have closed the discussion of that question, and shall now proceed to a second and much broader enquiry. That Virginia during the war of the Revolution, set up a claim to the country beyond the Ohio river is unquestionable. But I shall insist and endeavor to prove that she never had a valid title to it—that her title not only to it, but to both sides of the Ohio was disputed by the confederacy and by other States—that they claimed all that she asserted a right to—that in the end she adjusted her claim by compromise as other sovereignties are in the habit of settling their disputes—that it was thus settled and she relinquished her claim beyond the Ohio, with the express understanding, that the acceptance of her act of cession was not to be taken as an admission by the confederacy, (who was the Grantee) that Virginia had a title to the country ceded by her—that the separate and acknowledged right of Virginia to the country on the lower and of the confederacy to that on the upper bank of the Ohio begun with this compromise—and consequently, that the rights of the States on the opposite shores are co-eval with each other; and that this compromise controls and determines the extent and legal effect of the deed of cession by Virginia.

If I can succeed in establishing these facts, which in a great measure depend upon history—then I shall have shown, that in the case of Handley's lessee *vs.* Anthony, the Court and the parties fell into an error of fact in assuming that Virginia had the original title to the Country beyond the Ohio, and shall have brought this case plainly within the principle of the law of nations already adverted to, and recognized by the Court in that case viz: that "when a great river is the boundary between two nations or States, if the *original property* is in neither, and there be no convention respecting it, each holds to the middle of the stream." 5 Wheat. 379. Vattel's law of Nations Book 1. Chap. 22, Sec. 226; Wheaton's law of Nations 1 Vol. 219. 220.

I have already shown that upon the facts assumed, the case of Handley's lessee *vs.* Anthony was decided right. I shall show in the course of my historical examination, that if the true facts in respect to *the original title* to the country beyond the Ohio had been before the Court, and made a part of the record in that case, the decision then must and would have been, that the middle of the Ohio is the boundary. The Supreme Court of the State of Ohio has two or three times acknowledged the authority of that case and held in conformity to it that the low water mark on the Ohio side is the boundary. (See 2 Ohio Rep. 310; 11 Ohio Rep. 142; Nov. No. 1843, of Western Law Journal, page 54.)

But that Court must be presumed not to have known, that Handley's Lessee *vs.* Anthony was decided upon an erroneous assumption of facts. I shall now endeavor to establish the position, that the middle of the stream is, in fact, the true legal boundary between Ohio and Virginia. I may as well remark here that where a river or an arm of the sea divides two coterminous countries, the law of nations does not favor the exclusive claims of either, (such as is set up here by Virginia) to the whole rivers.

Mr. Wheaton in his treatise on the law of Nations 1 Vol. 219–220 lays down the rule, that where a navigable river forms the boundary of two States, the middle of the channel is generally taken as the line of separation between them—that a claim of exclusive property over rivers or portions of the sea contiguous to a country is not to be viewed with much indulgence—that the general presumption that each owns to the middle bears strongly against such exclusive rights—that they are to be strictly construed and clearly made out. From this doctrine it would follow that if I even prove it to be doubtful, whether Virginia had, in fact, a title to the country beyond the Ohio, then the middle of the channel is the boundary. The learned

Counsel for Virginia founds the title of that State to the Territory beyond the Ohio upon the charter of King James the first, in the year A. D. 1609, now commonly called, "the Virginia charter." This is the same title upon which she rested her claim to it, at the period of the American Revolution, and when she compromised her dispute with the Confederacy. This appears from her act of cession of the 20th of October 1783, passed to authorise her Delegates in Congress to convey the Country to the United States, and in the deed of cession made in conformity to the act on the 1st of March 1784. The language of the act of Assembly and of the deed of cession being, that they "convey, transfer, "assign, and make over to the United States "in Congress assembled for the benefit of "said States all right, title, and claim as well "of soil as jurisdiction, which the said Com- "monwealth hath to the Territory *within the "limits of the Virginia Charter* situate, lying "and being to the North West of the River "Ohio." (1. Vol. L. U. S. 474.)

I shall now proceed to enquire whether the Virginia charter did, in fact, furnish a foundation upon which that State could sustain a title to the country beyond the Ohio or to any portion of the Territory West of the Alegheny mountains. To obtain a right understanding of the legal effect of this charter, it is necessary to know what it, in fact, was —to whom and under what circumstances it was granted. This Virginia charter, was not, as the name now given to it, and that by which it is called in the act of cession would seem to imply, a charter to Virginia, or to the colony of Virginia, or to the people of Virginia; but it was a charter by James in 1609, to a company of gentlemen residing principally in and about the city of London, and who by that charter were organized into a corporation under the name and style of "The Treasurer and Company of adventurers and Planters of the City of London for the first Colony of Virginia." By this charter, the King in the first place authorised this company, which was anciently called, "the London Company," with his license to purchase and hold "any manner of lands, tene- "ments, and hereditaments, goods and chat- "tels within our realm of England, and do- "minion of Wales." He in the next place grants to the corporation, their successors and assigns, "all those lands, countries and ter- "ritories, situate, lying and being in that part "of America called Virginia, from the point "of land, called Cape or Point Comfort all "along the sea-coast to the Northward "200 miles, and from the said point of Cape "Comfort all along the sea coast to the South- "ward 200 miles, and all that space and cir- "cuit of land lying from the sea-coast of the "precinct aforesaid up into the land, through- "out from sea to sea *West* and *North-West*; "and also all the islands lying within one "hundred miles, along the coast of both seas "of the precinct aforesaid"—to hold the same in free and common socage. See Henning's Virginia stat. 1 Vol. 88—89—1 Vol. Hazard's Coll. 64—65.

The first thing that strikes us in reference to the question we are now making is that, that the *fee* to the country is vested in the Corporation, their successors and assigns—and not in the colony or people of Virginia. By the words "from sea to sea," the Atlantic and Pacific are supposed to be meant. The grant begins by drawing a base line of 400 miles in length along the Atlantic coast, of which Point Comfort is the centre, the Northern extreme of which would be at or near Cape May in New Jersey, and the Southern termination at or near Cape Fear in N. Carolina. From one of these terminations a line was to be drawn West, and from the other North West, back into the land "from sea to sea;" but from which extremity the *West* and from which the *North West* line is to be run, the grant does not specify. If the West line be drawn from the Northern termination of the coast line, and the North West from its Southern termination at Cape Fear, it would leave the State of Ohio West of and

beyond the grant; but as these two lines would come together before reaching *the sea*, the Virginia construction, and for that reason, I suppose the correct one, always has been, that the West line must be drawn from the Southern termination, on the coast, and the North West line from the other extremity of the coast line. If the lines be drawn in this way, the West line would strike the Pacific in the Gulf of California some eight degrees of latitude south of the present boundary line between the United States and Mexico. The other or North West line, would cross into Canada some where between Lakes Erie and Ontario, and strike the Pacific in the Arctic Circle some where North of Behring's Straits, embracing a portion of the Continent that would make not less than forty-five or fifty States of equal extent of territory with the present State of Virginia.

The very magnitude of the grant is calculated to astound us. That a territory of such immense extent should have been given away by the Crown to a company of adventurers, who proposed to plant a small colony there, seems to be all but incredible, and irresistibly leads the mind to suspect that the grantor labored under some great misapprehension or mistake. To determine what effect the law of nations would give to this grant, it will be necessary in the first place, to turn our attention back to the state of things that then existed. And here I may as well remark what I intended to have said before, that I fully agree with the learned Counsel for Virginia, that in searching for the interpretation and legal effect of this charter—of the Deed of Cession by Virginia to the United States—of the arrangement or compact between Virginia and Kentucky granting concurrent jurisdiction on the Ohio to the opposite States—we are to look wholly to the law of nations—whose principles are broader and larger than those of the common law, or any other mere municipal code. At that time, the North West Coast of America was wholly unknown—the interior of the continent had never been penetrated from either ocean; and except the line of coast along its Atlantic border, the vast region of country embraced within the limits of this grant, was a sealed book to the world, of whose contents all civilized men were profoundly ignorant. At that day, the idea of finding a passage between the Atlantic and Pacific, through or around the Northern part of the American Continent, agitated the minds of men, and deeply engaged the attention of Kings. Enough had been discovered by navigators to excite their hopes, and greatly to deceive them as to the real extent and character of this part of the continent. Sir Francis Drake, not long before, from the top of a mountain in the Isthmus of Darien, had seen both Oceans. This naturally led to the inference that the continent was a long and narrow strip of country. Some two or three years before the date of this charter, a small English Colony had settled down near Point Comfort, under the auspices of this London Company, who in 1606 had obtained a charter for a narrow strip of country on the coast, which, on account of that settlement, was made the centre of the new and second charter in 1609. Smith, in his history of Virginia, relates a fact, which shows that at that time, it was the belief in England, that the South Sea, as the Pacific was then called, was but a short distance from the Atlantic. He states that in the year 1608, the year before the date of the charter, "they fitted up in England, a "barge for Captain Newton, who was after-"wards a Deputy Governor of Virginia under "the charter, which for convenience of car-"riage might be taken into five pieces, and "with which, he and his company were in-"structed to go up James River as far as the "falls thereof, (where the City of Richmond "now is) to discover the country of the Mona-"kins; and from thence they were to proceed, "*carrying their barge beyond the falls to convey* "*them to the South Sea*, being ordered not to "return, without a lump of gold or a certainty "of the said Sea:"—The discovery of gold and of a passage into the Pacific, being the

two great ideas of that age in respect to America.

Smith also gives an account of a voyage of discovery, which he made that same year 1608, from Jamestown up the Chesapeake Bay, and says, "that the tidings which were "brought on their return, gratified the expec- "tations of every one, that according to the "relations of the Indians, *the bay stretched in- "to the South Sea.*" The charter was granted the next year. Considering the state of the knowledge of the geography of the country there can be no doubt King James imagined he, in granting the territory from sea to sea, was disposing of a country of no great extent inland; and fully accounts for what would otherwise be incredible. Prior to this time, however, the English navigators had explored the coast of Virginia, and discovered its rivers, which, as already stated, had been followed up by a settlement near Point Comfort. This by the acknowledged law of Nations gave title on that coast to the King of England; and if the distance between the Oceans had, in fact, been as small as was then believed, with a practicable water communication between them, he would as that law was then claimed and is now admitted to be, have been the proprietor of the whole Country embraced within the terms of his grant. But if the King of England, had any just conception of the Country, then he could not have granted away, or rather attempted to grant away all this territory without, as I shall hereafter, show, a direct violation of the foundation principle on which he could alone support a claim to any part of the continent of America. It is therefore quite apparent, that in making this grant King James did not intend to overstep the law of Nations by disposing of what did not belong to him. And now, I am prepared to put the enquiry, what did the charter, in fact, grant to this Company! I answer, *just as much as the crown of England had title to—just as much as belonged to it and no more.* For all beyond that, the grant was not worth the parchment on which it was written. It is plain Kings cannot grant what does not belong to them more than other men. The law of Nations forbids it. If it were permitted, it would fill the world with contention and unsettle all public rights. Nor can they grant that which belongs to nobody—that which has never been subjected to the actual possession, use and dominion of man. See Vattel Book 1. Chap. 18. Sec. 203–204–205–206–207 and see note to Sec. 207. And this presents the question, how much of the granted Country did the Crown of England own! To answer this enquiry satisfactorily, we must resort to those principles, which have been settled by the law of Nations. It is a rule of that law, that the first finder and actual permanent occupier of an unknown uninhabited Country, acquires an exclusive property in and dominion over it; subject however to this qualification or exception, that the quantity of territory appropriated by him must be proportionate to his wants and his ability to use it. The general rule is that the first discoverer and occupier acquires title. Spain first discovered this Continent and made the first settlement on it. She therefore as the first finder and occupier claimed the whole of it. This was a specious claim; but it was resisted by other Nations, and England was one of them, who insisted on the qualification of the rule. To strengthen her claim, Spain applied to the Roman Pontiff who was then in the zenith of his power. The Pope, as the Vicar of Christ on Earth, granted the whole Continent to Spain, and forbid all other Sovereigns or people under pains and penalties from entering with it. No Nation in Europe, however, except Portugal which had got a similar grant from the Pope of the Countries beyond the Cape of Good Hope, paid any attention to this grant. England was foremost in resisting it, in insisting on the qualification of the rule, and in sending out her navigators to explore the uninhabited portions of the Continent, and in forming settlements on such parts of it as were vacant. This same

King James was particularly active in his opposition to this pretension of Spain. He sent out navigators on voyages of discovery —granted charters and planted colonies.— When he made this grant, a little band of his subjects had planted themselves on the coast of Virginia, who altogether would make a small village, and could not possibly for centuries to come actually people the Country embraced within what are now known to be its limits—which are almost as large as all of Europe. If therefore he knew what he was granting, as we know he did not, he was guilty of a gross violation of the principles of his own government, and of the law of Nations. Both England and the United States are now engaged in a controversy about a large division of the Territory embraced in this grant—and both found their claims upon discovery and settlement made near two hundred years afterwards. Vattel after laying down the rule, that all mankind have an equal right to things that have not yet fallen into the possession of any one, and that they belong to him who first takes possession of them, says, "but it is questioned whether a "nation can by the bare act of taking possession, appropriate to itself countries which it "does not really occupy, and thus engross a "much greater extent of territory than it is "able to people or cultivate. It is not difficult to determine that such a pretension "would be an absolute infringement of the "natural rights of men and repugnant to the "views of nature, which having destined the "whole earth to supply the wants of mankind "in general, gives no nation a right to appropriate to itself a Country except for the "purpose of making use of it, and not of hindering others from deriving advantage from "it. *The law of nations therefore will not acknowledge the property and sovereignty of a "nation over any uninhabited Countries; except "those of which it has really taken actual possession—in which it has formed settlements, or "of which it makes actual use.*" See Vattel, Book 1, Chap. 18, Sec. 208.

From a regard to the fitness of things, to provide for the future wants and business of men, and to give ample but reasonable scope for the expansion of newly formed communities, a somewhat liberal application has been given to these principles. It has been and is a received doctrine, that the nation which first discovers a river and permanently settles on its waters, thereby acquires title to all the territory drained by it. And this is believed to be as far as these principles have been extended, or their extension acknowledged. On that ground, the United States now claim the whole Country drained by the Columbia River. Great Britain does not deny the principle to this extent; but she disputes the fact of our prior discovery and settlement on the waters of that river. At the date of this charter, neither the Ohio River nor any of its waters, nor the countries beyond it, had been discovered, much less occupied. Nor was it discovered or occupied for near or quite a century afterwards. To how much country then within the limits of that charter had the crown of England a title, which the law of nations would recognise as valid? I answer, to so much as is drained by the rivers that flow into the Atlantic, and had been discovered by the English navigators, followed up by settlement, and no more.— In other words, to the top of the Alleghenies; those highlands that divide the known from the then unknown rivers. Beyond that the charter was clearly a nullity, on the same principle that the Pope's grant of the Continent was repudiated by the law of nations. Both grants belong to the same class. It is plain Virginia must look to something else than to that charter for a title to the Country beyond the mountains. And here permit me to advance one step further. For the sake of the argument, I will imagine that the charter did, in fact, vest in the corporation, a valid title to all this boundless and unknown region.— And now let me enquire, did it remain in force, and perpetuate and transmit an unextinguished right to the countries down to the

date of the deed of cession in 1784? This charter among other things provided for a council of thirteen persons who were to hold their sittings in the City of London, in whom was vested the power to appoint to, and remove from office the Governor and all other officers of the Colony, "and also to make, ordain and establish, all manner of orders, laws, directions, instructions, forms and ceremonies of government and magistracy, fit and necessary for, and concerning the government of said colony and plantation." Hazard's Coll. 1. Vol. 67. The charter deprived the Colonists of all power or voice in their own affairs; and what made it all the worse, they were to be governed by this council three thousand miles off, composed of men who had no opportunity to see with their own eyes, the bad effects of their follies, mistakes or acts of oppression. As might have been expected, matters went on badly with the Colony. Complaints of abuses of the home Council, of the Colonial Governors, and of official oppressions on the colonists were perpetual. This state of things continued for fourteen years, when the King caused a writ of quo warranto to be issued against the Corporation for abuse of power. At the Trinity Term of the Court of King's Bench in 1624, judgment was rendered against the corporation, cancelling the patent and ordering the franchises of the charter to be resumed by the crown. See Chalmers Annals. 62.

Thus ended the charter, and the Crown by the judgment of the Court became re-invested with the fee of the land granted to the Corporation. In August of the same year, the King issued a commission appointing a Governor and eleven Councillors to reside in the Colony, to whom the government of its affairs was committed. [1 Haz. Coll. 189.] This Commission gives a history of the proceedings in the quo warranto—the judgment, and the causes for which it was rendered.—Thus Virginia became what is commonly called, a Crown Colony, and so remained down to the date of the American Revolution.—The King in this matter, appears to have acted with fairness, and with a view to the welfare of the people of the Colony. He confirmed to them all their property, and all rights to lands, which they had purchased of the corporation. It cannot be denied that the King's bench had full power to render this judgment; nor was the regularity of the proceedings over after called in question so far as I can find. By this judgment, the people of the Colony were placed on the footing of other subjects of the Crown, and their connexion with the Corporation dissolved. The Crown now again held the territory as it held it before the charter—and thenceforth sold out, or granted away, the vacant lands at its pleasure. If it be urged that the vacation of the charter was a high-handed measure—an unjust attack on the rights of the colony and its people, and therefore the judgment of the Court ought to be disregarded and treated as a nullity; and the charter held to be in full force, the judgment to the contrary notwithstanding:—the answer is, that the Legislative and public proceedings of Virginia prove the very reverse of this. It was natural, that the corporators—the men, who had thus been deprived of their property, should endeavor to get it back, and to obtain a renewal of their charter on which they had expended much money. They, as it appears, made the attempt; but it was strenuously and successfully resisted by the people of the Colony.—About fifteen or sixteen years after the dissolution of the Corporation, the Governor and Council of Virginia sent an inhabitant of the Colony to England of the name of Landis on some public business. Instead of attending to the mission on which they sent him, he exhibited a petition in the House of Commons praying for a restoration of the letters patent of incorporation to the late London Company. He was probably invited to this by the old members of the corporation who lived in London. When news of this proceeding came to Virginia, the Grand Assembly, as their General Assembly was then called, took the

matter in hand. According to their statement they had a great and solemn debate on this subject; which resulted in passing an act prefaced by a preamble, or declaration (as they call it) setting forth their reasons for passing it. They commence by averring that Landis had mistook the business on which they sent him—that he had no authority from them to present the petition. They proceed to expatiate in strong and eloquent language on the intolerable abuses of the old corporation, and on their comparative happiness and prosperity under their new government.—They deny that they or the people of the colony ever desired or sought after a restoration of the corporation, and they say that "the "old corporation cannot by any possibility be "again introduced without absolute ruin and "the dissolution of the Colony." And finally to sum up the whole, they "declare and testify to all the world, that they will never admit the restoring of said company," saving, however, to themselves, "a most faithful and loyal obedience to his sacred Majesty their dread Sovereign." All this is followed by an act declaring that any person who shall endeavor to restore or reduce the colony to a corporation or company shall forfeit all his estate within the limits of the colony, one half to the informer, and the other half to public uses. This act was passed on the 1st of April 1641. See 1 Vol. Hen. Stat. 230.

The history of Virginia shows that these colonists had good reason to resist the restoration of the corporation. The charter government from the time of the first charter in 1606, had existed about 18 years before its vacation. During that time more than nine thousand emigrants had been sent to Virginia, and yet at the dissolution of the corporation, the colony was reduced to about eighteen hundred. When this attempt was made to restore the charter, the new government had been in operation about the same length of time, and the population of the colony had risen up to about twenty thousand. [1 vol. Marshall's Life of Wash. 68.]

About thirty years still later, the Grand Assembly sent certain agents to England to endeavor to procure a modification of the Colony government. In their correspondence with the officers of the crown the old charter is mentioned by them, in which they say, the old charter was called in at the *instance* and *for the sake of the planters*. [2 vol. Henning's stat. 526.] It would seem to be quite too late, now, to set up or insist on the validity of a charter which was vacated at the instance and for the sake of the early colonists—that relieved them from oppression—advanced their happiness and prosperity—the renewal of which, they never sought or desired, and firmly resisted.

I have now done with all I propose to say on the subject of the charter; and will next direct my attention to the new government established in its place.

Virginia now became, and as I have already said, ever after remained, till her separation from the mother Country, a crown or Royal Colony. And here permit me to advert to one important distinction between a charter and a Royal Government. Whatever rights are secured by the charter cannot be infringed or altered by the crown without the consent of the Corporation; nor abrogated unless by judgment of law founded on proof of some act of omission or commission, which works a forfeiture or dissolution of the Corporation. But where the government is founded on Royal Commission, as that of Virginia was on the dissolution of the Charter, it is a mere creature of the Royal will—its boundaries—its powers—all its machinery of government, may be modified, altered or annulled at his pleasure and discretion. That the extent of the Royal provinces depended upon the pleasure of the crown, who might alter their boundaries or dismember them at will, see the case of Johnson *vs.* McIntosh 8 Wheat. 543. 1 Story's Com. 143.

Numerous instances might be adduced, where ancient boundaries were restricted or enlarged—where established Colonies were divided, and where two were united into one

by order of the King. There was scarcely a province in America at the commencement of the Revolution, in regard to which this power had not been exercised, and in respect to some of them in repeated instances. The authority of the crown to make these changes seems never to have been questioned. From this distinction between a charter and a crown colony, it results that the former has a vested right to its boundaries which cannot be changed or abrogated except in one of the modes already stated; while a royal province has no such right. It therefore becomes all important to look into the Colonial history of Virginia, and see, what the crown in fact, did in respect to the boundary and limits of the province, while it remained a crown Colony. The royal government was established on the dissolution of the Corporation, without specifying any boundaries,—the King's commission merely declaring, that the persons to whom it was addressed, were appointed the Governor and Council of "the Colony and Plantation in Virginia." See Haz. Coll. 189.

It is a specious argument on the side of Virginia to say, that if no change was made in this respect, it is to be presumed the new government was co-extensive with the limits of the old charter. And I admit, if the Crown of England had owned all the Country embraced within it, the argument would be sound. But here again the principle of the law of nations returns in all its force, that the limits of the new government must, of necessity, be restricted to the territorial rights of the crown. The king could no more set up a government over a Country not his own, and where he had no subjects, than he could grant it away by charter. The arguments against both are the same. This rule of the law of nations is founded on the plainest principles of common sense and of public policy. It results from the authority already cited to show how a nation may acquire vacant territory and establish government in it. It results from the law of the national or high domain, as it is sometimes called, which is held to be inseparable from the sovereignty.—(See Vattel Book 2, Chap. 7, Sections 79 to 84 inclusive.) It follows also from the equality of nations, in respect to which, the law is, that "what is permitted to one nation is permitted to all, and what is not permitted to one is not permitted to any." When the new government was established in 1624, the same benighted ignorance of the interior of the Country still prevailed that existed when the charter was granted sixteen years before. Neither the river Ohio nor any of its waters were known. Consequently the rightful limits of the territory of the Crown were still confined to the sources of the rivers that flow into the Atlantic. There was still only a feeble settlement few in numbers, not exceeding eighteen hundred—confined to tide water, and on the decline. It is therefore impossible to imagine, that the King in granting his commission, for the government of this little handful of people intended under the name of "the Colony and plantation in Virginia" to extend a government over the vast region between the Atlantic and Pacific embraced within the terms of the old charter. If he intended to confine the government to such territory as in fact, belonged to the crown whatever that might be, it was all right, but if he intended to embrace more, he acted in violation of the law of Nations, which is as obligatory on Sovereigns as on private persons. (See Vattels' preliminary Chap. Sec. 7.) In the absence of proof to the contrary, it is not to be presumed that he intended to offend against the law of nations by attempting to set up a government over what did not belong to him, and where he had no subjects to be governed. If he was ignorant of the extent of Country between the two seas, and of the actual extent of his territory, as we know he was, the law of nations will restrict the operation of his act to what was lawful. This is my answer to the argument, that the new government must be presumed to have been co-extensive with the limits of the old charter. In 1632, only eight years after Vir-

ginia became a Royal Colony, Charles 1st granted Maryland to Lord Baltimore. In 1662, Charles 2d, granted Carolina to Clarendon, Carteret and others, and in 1680 he granted Pennsylvania to Wm. Penn. All of these were within the limits of the old charter. I will now direct your Honors attention to an item of history to show how this matter, of the extent of the province, was understood here in Virginia in those times.

In the year 1670, the Lords Commissioners of Foreign Plantations sent out from England a series of enquiries, respecting Virginia, addressed to Sir William Berkeley, who was the Governor of the Colony and had been for thirty years; except a short interval in Cromwell's time; and who, consequently, must have known better than any other man, what were the limits and extent of the government over which he had so long presided.

Judge Marshall in his history, says of Sir William Berkeley, that "he was highly respectable for his rank and abilities. He was still more distinguished by his integrity, by the mildness of his temper, and the gentleness of his manners." They were answered by him the next year. These enquiries with their answers will be found in the 2 Vol. of Henning's Virginia Statutes page 511 to 517. Mr. Henning prefaces them, with the remark, that "a "more correct statistical account of Virginia, "at that period, cannot, perhaps any where "be found. The answers appear to have been "given with great Candor, and were from a "man, well versed in every thing relating to "the Country, having been for many years "Governor."

To the question, "What are the boundaries and contents of the land within your government?"

He answers:—"As for the boundaries of "our land, it was once great, ten degrees in "latitude; but now it has pleased his Majesty "to confine us to half a degree. Knowingly, "I speak this—Pray God it may be for his "Majesty's service, but I much fear the con- "trary." Mr. Henning in a note to this answer says, that the half degree of latitude must refer to the Eastern boundary on the Sea Shore. In this, he is doubtless, correct, as before that time (1671) the Carolinas had been granted on the South and Maryland on the North, both taken out of the old charter limits.

Question.—"What rivers, harbours, or roads are there in or about your government, and of what depth and soundings are they?"

Answer.—"Rivers we have four, all able safely and severally to bear and harbour a thousand ships of the greatest burthen." And for the names of these four rivers he refers to his answer to a preceding question which was, "What castles and ports are within your government, and how situated."

Answer.—"There are five ports in the Country, two in James River, and one in the three other rivers of York, Rappahannock and Potoma[illegible]."

Put these several answers together and they amount to this, that Virginia for her Eastern boundary along the sea shore had half a degree of latitude—that in the interior, she embraced the Country drained by the James, York, Rappahannock and Potomac Rivers.—It is a perfectly plain and well defined general description of that part of the present State of Virginia which is situated to the East of the Alleghany Mountains. This was the Virginia of that day, as appears by the answer of the man, who for near thirty years had been its governor—a man of ability and integrity—an answer not casually, carelessly or incidentally given; but *officially* and *directly*, with care and deliberation for the information of that department of the home government, which had charge over the Colonies. Its correctness therefore can not be doubted. When enquired of "what rivers there are in and about his government!—Does he name the Ohio as one of them, or any of its great tributaries flowing into it from the East, such as the Monongahela, Kanawha, Kentucky, or Tennessee! He knew nothing about them, and if he did, the

it is plain he did not regard them as being within his government. There is another omission in these answers, that shows that it was not then understood, as is now contended, that the new government embraced all the Country within the limits of the Virginia Charter. Pennsylvania was already within its limits. These answers were given nine years before the grant to William Penn. The fact that he does not name the Delaware or Susquehanna among the rivers in his government proves very clearly that he did not regard that country as part of the then Virginia. Those rivers and their location were well known in 1671. And if the new government was understood to embrace all the old charter limits, would he not have regarded all of the territory, as within his government, and as still being a part of Virginia which had not been granted away to Lord Baltimore in that quarter? And if so, would he have forgotten to name the rivers in Pennsylvania in his answer? Judge Marshall, states that in 1622, two years before the Colony of Virginia was put into Royal Commission, the settlements had extended along the banks of the James, York, Rappahannack and even as far as the Potomac. It is very plain, that Governor Berkeley regarded the Virginia settlements on the Coast, and the Country drained by the rivers flowing through the settlements, as embracing his government and the whole of it. This gives to the Royal Commission under which he was acting, a reasonable interpretation; while that now contended for by Virginia, which would extend his government to the Pacific, is most unreasonable and extravagant; as well as repugnant to the law of nations, as has been already shown. But a new state of things was now shortly to arise —the curtain, which had so long hid in darkness the magnificent Valley of the Mississippi and its tributaries was soon to be drawn aside, and lay it open to the view of the world.— Discoveries were now about to be made, which formed the basis of one of the grandest political conceptions of that century, and gave rise to some of the greatest events of the next. Two years after Gov. Berkeley had given this information to the home Government, the French, whose settlement at Quebec was co-eval with that of the English at Jamestown, penetrated through the great Lakes, and passing over the Country from Lake Michigan, through the Fox and Wisconsin rivers, entered the Mississippi, descended it a thousand miles, and returned again into the Lakes through the Illinois river.— The report of Joliet, a Missionary, who with a party of men, had performed this expedition, excited the enterprise of Le Salle, a French Officer, who explored the Valley of the Mississippi and in 1683, founded Cahokia, Kaskaskia and some other Villages, and returning to France laid before the French Cabinet a scheme of forming an establishment at the mouth of the Mississippi and by a connected chain of settlements and military posts to draw a cordon around the English Colonies which had no where penetrated beyond the Alleghany Mountains. The King of France entered into the views of La Salle, and took immediate measures to carry them into execution. This project was viewed for a long time by the English with little concern, and as little more than a wild chimera; but the French steadily pursued it for half a century or more, till they had possessed themselves of all the commanding points on the Waters of the Mississippi and St. Lawrence, with a connected chain of settlements from the Gulf of the St. Lawrence to the Gulf of Mexico. It was then that the English awoke to a conviction of the reality that their neighbors had laid the foundation of one of the most magnificent empires the world had ever seen, and which, in time, would overshadow, if it did not destroy the power of Britain on this Continent. But at that period the English had vastly the advantage of the French in the number of their Colonial population. No sooner were the English sensible of their danger than disputes began to arise between them and the French about their boundaries,

and especially about their respective rights to the great Valley beyond the Alleghany Mountains.

The French claimed the Country, beyond the Mountains as the first explorers and first permanent occupiers of it. The British rested their claim on the ground, that they were the first explorers and first permanent occupiers of *the Atlantic coast*, and that all the interior from sea to sea, was but *an appendage* to that coast. Judge Marshall, in his history, has stated the claims of the two parties in these words—"While Great Britain claim-"ed an indefinite extent to the West in con-"sequence of her possession of the sea coast, "and as appurtenant thereto, France insisted "on confining her to the Eastern side of the "Apalachian or Alleghany mountains, and "claimed the whole countries, whose waters "run into the Mississippi in virtue of her right "as the first discoverer of that river. The "delightful region between the summit of "those mountains and the Mississippi, was "the object for which these two powerful na-"tions contended; and it soon became appa-"rent that the sword alone could decide the "contest." (1 vol. Marsh. 352.) It was so decided. The capture of Quebec—the destruction thereby of the seat of the French power—the cession by France to England of Canada and of the whole Eastern valley of the Mississippi, with a small reservation near its mouth, are great events with which all are familiar. Thus Great Britain in 1763 acquired title to the country beyond the mountains by treaty of cession. I hold that that *cession* was the beginning and foundation of her title; for the chapter of the law of nations to which I have already called the attention of the Court, pointing out and prescribing the mode in which nations may acquire title to vacant and unoccupied territory, shews that the French had complied with all the conditions that law imposes; while England had complied with none of them. She had neither discovered nor occupied the country in dispute, or any part of it. That law also shows, that the claim of England, that her possession of *the Atlantic coast* in this part of America carried with it, as *appurtenant to it*, the whole interior of the continent, or any part of it, beyond the sources of the rivers which discharge themselves into the sea on that coast was not even a *respectable pretence* of title. The title of France was the same with that by which the United States now claim the Valley of the Columbia river, with this difference in favor of France, that from the time when she first planted a Colony on the waters of the Mississippi she maintained uninterrupted possession of the country for near three quarters of a century. Ohio holds, what in respect to Oregon is now the American side of the question. Stoddard in his history of Louisiana says that prior to the time of the cession to England, the whole territory on both sides of the Mississippi situated between the lakes and the Gulf of Mexico, and between the Mexican and Alleghany mountains, went under the general name of Louisiana—that part of it ceded to the English lost the name. (page 71.) Assuming, then, that England by that cession for the first time acquired a valid title to the Valley of the Ohio, the question presents itself did the crown attach it to Virginia! This it had an undoubted right to do or not, at its pleasure. For it is idle to say that the colony had any power or control over the king in this matter. From the time Sir William Berkeley in 1671, gave the answers already spoken of, down to the Treaty of Cession by France in 1763, no alteration, that I can find, was made by the crown, or by its authority in the limits of Virginia, unless the grant of Pennsylvania to William Penn in 1680 be regarded as such. This brings us down to within thirteen years of the Declaration of the American Independence. Let us now see what was done with the ceded territory by the crown during that interval. The treaty of cession by France bears date on the 10th of February 1763.—On the 10th of October of that year, the King of England issued a royal proclamation, which has a most material bearing on this question. It commences by reciting that by the late treaty with France, the Crown had secured valuable and extensive acquisitions of territory in America; and proceeds to make known that letters patent had been issued for the establishment within the countries ceded to the Crown of "four distinct and separate governments styled and called by the names of Quebec, East Florida, West Florida and Grenada." It then marks out the boundaries of these governments, after which, it goes on to annex certain new districts of country to the provinces of Newfoundland, Nova Scotia and Georgia; but the country between the Alleghenies and the Mississippi is not included in any of these. Having thus disposed of his newly acquired dominions, except the country beyond the mountains, he proceeds to make a disposition of that. He says that it is just and reasonable, and essential to his own interest, that the tribes of Indians with whom he was connected, and who live under his protection, should not be molested or dis-

turbed in the possession of such parts of his dominions and territories as had been reserved to them for their hunting grounds; wherefore he forbids all governors of any of his colonies to make grants for any lands, *"beyond the heads or sources of any of the rivers, which fall into the Atlantic from the West or North-West."* And having thus prohibited all grants of lands beyond the heads of the Atlantic rivers, he proceeds further in these words, "And we do "further declare it to be our royal will and "pleasure, for the present as aforesaid, *to re-"serve under our sovereignty, protection and "dominion* for the use of said Indians, *all the "land and territories lying to the Westward of "the sources of the rivers which fall into the "sea from the West and North-West as aforesaid.* "And we do strictly forbid, on pain of our "displeasure, all our loving subjects from ma-"king any purchases or settlements what-"ever, or taking possession of any of the "lands above reserved, without our especial "leave and license for that purpose first ob-"tained. And we do further strictly enjoin "and require all persons whatever, who have "either wilfully or inadvertently settled them-"selves upon any lands, which not having "been ceded to, or purchased by us, are still "reserved to the said Indians as aforesaid, *"forthwith to remove themselves from such set-"tlements."* (See 1 vol. L. U. S. 446.)

The government, at home, well knew from the history of the past, that if the country beyond the mountains, which was then inhabited by powerful and warlike tribes, was included in any of the Colonial Governments, encroachments would be made upon them by the people, which would be the signal for new Indian Wars. For the security, therefore, of his Colonies, as well as because it was *"just and reasonable"* that they should have a country for their hunting grounds free from molestation, he thought proper not to make a province beyond the mountains, nor to attach it to any Colony; but *"to reserve it under his own sovereignty, protection and dominion, for the use of the Indians."* And to carry his intentions more effectually into execution, and to mark more emphatically his determination, that this country so reserved and set apart, should not form a part of, or be under any Colonial Government, he orders all settlers beyond the mountains forthwith to retire from the reserved territory. It is not possible for language to be stronger, or the intention of the Crown to be more distinctly stated. If, in fact, the country beyond the mountains was included in the Colony of Virginia, by the Royal Commission of 1624, as is now contended, or if it had been included in it at any subsequent time, it cannot be doubted it was now severed from the province by this proclamation, and the province itself confined to the sources of its Atlantic Rivers, that is to say, to the Alleghany Mountaine. The right of the Crown to do this, as has been already shown, was unquestionable. This proclamation, then, fixes the limits of the Colony of Virginia precisely where, and as they were nearly a hundred years before, when Sir William Berkeley gave his answers on this subject; and precisely where they ever were under the royal government, so far as I can find. It follows as a necessary consequence from this proclamation, that if the General Assembly of Virginia, either with or without the Royal sanction or confirmation, had, prior to that time, extended the lines of any county over the limits of the reserved country, or if they, or the chief Executive Officer of the Colonies, had made or promised any unauthorized and unconfirmed grants of land, within the reservation, all such Acts of Assembly, and all such grants, were by virtue of this proclamation, effectually put out of existence and annulled. And if any Act of Assembly of Virginia to extend the limits of any county in the reserved territory were passed after the date of the proclamation, or if any grant of land within the reservation was made by the Governor or Assembly without the special license of the Crown, all such acts and grants were not only nullities, but in direct and open violation of the positive and emphatic prohibitions of the proclamation; and could not lay any legal foundation for a claim of title to the territory after the separation of the Colonies from the Crown. They were as nugatory as would be an Act of the new Territorial Legislature or Governor of Iowa to extend the limits of its counties into Oregon, or to grant lands there, without authority of Congress. I can perceive no difference between the two cases. We must not, therefore, lose sight of the fact, that during the whole time of the Royal Government, the question is, what did the Crown do or authorise? Not what unauthorised assemblies, officers, or persons did. And now permit me to enquire, did the Crown, after this proclamation, ever attach the country reserved for the Indians under his own dominion, or any part of it, to the Colony of Virginia? If it did, I have not been so fortunate as to find the evidence of the fact. So far from doing that, a few years after the date of this proclamation, and just before the breaking out of the American Revolution, the

Crown had it in contemplation to establish a new province in that part of the reserved territory which lies between the Alleghany Mountains and the River Ohio, and North of the mouth of the Scioto river, embracing the whole of the present Western Virginia, and a part of the now State of Kentucky. In 1769, negotiations for the establishment of this Colony, were opened with the Crown, by Thomas Walpole, and a number of associates, residing both in England and America; and were prosecuted till the terms of the grant had passed the King's Council, and the charter for the Colony had been prepared and was complete, except to affix the Royal seals to the letters patent, when the whole business was suspended by the breaking our of out revolutionary disturbances. (See Jour. of Cong. May 1st, 1782, 4 vol. 23.)

During the pendency of these negotiations, notice of them was given to the Virginia authorities, in a letter from Lord Hillsborough, then Secretary of State of Great Britain, dated July 31st, 1770. That letter, as appears by the answer, was laid before the Council of Virginia, and answered by President Nelson on the 18th of October of that year. The following are extracts from the answer of the President and Council:—

"On the evening of the day your Lordships letter to the Governor was delivered to me, as it contains matters of great variety and importance, it was read in Council, and together with the several papers enclosed, it hath been maturely considered; and I now trouble your Lordships with their, as well as my own, opinion upon the subject of them."

"We do not presume to say to whom our gracious Sovereign shall grant his vacant lands, nor do I set myself up as an opponent to Mr. Walpole and his associates." * * * *

"With respect to the establishment of a New Colony, *on the back of Virginia*, it is a subject of too great political importance for me to presume to give an opinion upon.—However, permit me, my Lord, to observe, that when that part of the country shall become sufficiently populated, it may be a wise and prudent measure." (See Papers of Cong. in State Dep. Nos. 30–77,—and 5 Vol. Rep. Committee, 2d Session 27 Cong. No. 1063, page 55.)

This letter of the President and Council of Virginia, the result of their joint deliberations, seems to prove conclusively that no doubt existed at that time, in regard to the boundary of Virginia. No objection is made that the country about to be erected into a Province, was a part of the Colony of Virginia, or that it would circumscribe it within too narrow limits. On the contrary, it is spoken of, not as a country *within*, but as the country on the *back of Virginia*. Mr. Madison, in a letter to Mr. Jefferson, in 1782, says that this letter will be used in Congress to prove that Virginia had no territory beyond the Mountains. (See 1 Vol. Madison's papers, page 119.) As already stated, I cannot find that by any act of the Crown, the Western Boundary of Virginia was, even during the existence of the Colonial Government, extended beyond the limits prescribed to it by the proclamation of 1763. And this brings me to the period of the American Revolution. It is here important to understand, correctly, what bearing the new relations created by the Declaration of Independence, had upon the question of *right* to the Crown lands, and what the parties to that declaration did in respect to those lands.

All lands, on the Continent subject to English jurisdiction, which had not been granted away by the Sovereign, were the admitted property of the Crown. When the Crown was divested of the right of soil and jurisdiction, they both of necessity passed to, and vested in some other proprietor. No sooner, therefore, was the war of the Revolution fairly opened and the Declaration of Independence put forth, than the question to whom these rights had passed became an enquiry of the deepest interest to the whole confederacy. All the States were greatly straightened for the means of bearing their respective proportions of the expenses of the war. All attached a very great and probably undue importance to these lands, as a source of revenue, or as a fund on which to obtain credit by their hypothecation. Two sets of opinion, or if you please, two parties sprung up about the right to them. One maintained that the States, respectively, had succeeded to the Crown lands within their limits. The other, that the confederacy, or nation, at large, had succeeded to the rights and property of the Crown, as a common fund. Many very distinguished men arrayed themselves on different sides of this question. Mr. Hamilton, for example, held the latter opinion, and Mr. Madison, the former. Those States whose Colonial limits embraced any considerable amount of these lands, claimed that they were the property of the State, and that the right of the Crown, by the Declaration of Independence, had passed to the State sovereignties, where the lands happened to be. Those, on the contrary, who had none of these lands within their limits, claimed that all the Crown

lands and crown property, had passed to the nation; on the principle, that what was acquired and conquered by the common effort, blood and treasure, was by the law of nations and of justice, the common property of all. Seven States, embracing within their limits large bodies of these lands, insisted on the right of the State Sovereignty—the other six, strenuously insisted on the right of the Nation, and thus the controversy forthwith found its way into the Congress of the Confederation, where those who maintained the rights of the nation, demanded that the property of the Crown that might be wrested from it, by their united efforts, should be applied to maintain the war or pay the debts incurred by it. The States which advocated the right of the State Sovereignty to these lands, evidently had a powerful motive to extend their territorial limits as far as possible. The stale and forgotten claims of the provincial governments to territory, were diligently revived, and as might, under such circumstances, be expected, were brought forward as unextinguished and subsisting rights. That controversy is now forgotten; but the history of the revolution abundantly proves, that nothing save the war itself, so deeply agitated the whole country, as this question; and no other subjected the Union to so great peril and hazard.

In 1777, when the question of the Confederacy came to be discussed, in Congress, it was found impossible to come to any agreement on this subject, and the Articles of Confederation were finally presented to the States for their ratification, leaving this question unsettled, by omitting to make any regulation about it. Some of the States, and particularly Maryland, claiming that these lands were the common property of the nation, refused to accede to the Confederacy for some years, on account of this omission, insisting strenuously that a provision should be incorporated into the Articles of Confederation settling this controversy; and finally, when at last under the severe pressure of the war, which rendered united effort indispensably necessary to save the sinking and waning cause of the revolution, she did come into the Confederacy, it was with a protestation that, by so doing, she waived no rights to her share of the public domain. Massachusetts and Connecticut set up claims to a large extent of country beyond the Ohio, and New York claimed the whole territory *beyond the Alleghany mountains,* as within her jurisdiction. Virginia claimed the whole, and the Confederacy also claimed it all. So that for all the country West of the Alleghany Mountains, there were three distinct claimants, and for so much as was covered by the respective claims of Massachusetts and Connecticut, there were no less than four parties setting up title to the same Crown lands. When Virginia, in 1776, came to form her State Constitution, she embraced within the limits, she assigned to herself, all the territory claimed by the Confederacy, and by each of these States.—In fixing her boundaries, the Constitution, in the first place, *ceded* and *released* to the people of Maryland, Pennsylvania, North and South Carolina, all the territories contained within their charters, and which, as has been already shown, were within the limits of the Virginia charter of 1609. It then proceeds to declare, that "the Western and Northern extent of Virginia shall, in all other respects, stand as fixed by the *charter* of King James I. in the year 1609, and by the public treaty of peace between the Courts of Great Britain and France in the year 1763." (See 9 Vol. Henning Stat. 118.)

Here is an assumption, that till that time, Virginia by virtue of the charter of King James to the London Company, had been the proprietor of North and South Carolina, Maryland, and Pennsylvania, all of whose territories are thereby *ceded, released* and confirmed to them respectively. Not only was this pretence now for the first time set up; but this old charter, which never did convey title to the Colony of Virginia, but to a non-resident Company—which had been vacated and dead for more than one hundred and fifty years—which, during all that time, had been repudiated by the Crown and the Colony, and that repudiation enforced by a law of the province imposing a forfeiture of the whole estate of him who should attempt to revive or restore it, was now found to be a living instrument, and to invest Virginia with a valid title to the whole body of Crown lands beyond the mountains. This claim of Virginia was remonstrated against by the Legislatures of several of the States, in language of the bitterest complaint. There being six States on one side and seven on the other; Congress dared not, if it had the power, decide this disputed question in favor of either party to the controversy. It was clearly foreseen a decision in favor of either, would break up the confederation, and ruin the cause of the revolution. To obviate the necessity of deciding this question, resort was had to compromise, as all other public disputes are settled where an appeal is not taken to the sword.

Virginia, as will be seen hereafter, secu-

red to herself, in the compromise, a title to the country West of the Mountains, as far as the Ohio; though it was strongly remonstrated against by some of the States, who objected to her retaining so large a share of the Crown lands. As this controversy among the members of the Union, and in the Confederacy, was co-eval with the Declaration of Independence, it is apparent that no act done or law passed by any State, during the dispute, without the assent of the claimant of the antagonist right, could in the least benefit such State, or give any validity to its pretensions.

Any laws, therefore, passed by Virginia, whether in the shape of Constitutions or of ordinary Statute Laws, setting up exclusive claims to the country in dispute, could avail her nothing as against the rights of other States, or of the Confederacy. We are not, therefore, to resort to her constitution or laws passed during the controversy, to determine what her rights were. I put them out of the question, as evidences of right in her behalf.

I will now proceed to the legislative history of the claim of Virginia during the Revolution, and show in what manner it was finally compromised.

In December 1778, the Legislature of Maryland adopted a solemn declaration on the subject of the Crown lands, and addressed certain instructions in conformity to the principles of that declaration to the members of Congress from that State, directing them not to accede to the confederation unless an article or articles should be added thereto, 'giving full power to the United States in Congress assembled to ascertain and fix the "western limits of the States claiming to "extend to the Mississippi or South Sea, and "expressly reserving or securing to the United States a right in common, in and to all "the lands to the Westward of the frontier "as aforesaid." They also declare, "That "the exclusive claim set up by some of the "States to the whole western country by extending their limits to the Mississippi or "South sea, is in their judgment *without any* "*solid foundation*, and they religiously believe, will, if submitted to, prove ruinous to "this State, and to other States similarly circumstanced, and in process of time, be the "means of *subverting the confederation*."—They accuse Virginia of an ambition, by an unjust extension of her territory, to build up a State that would overshadow the other States of the Union. They declare that Virginia had adduced neither argument nor evidence in support of her right, "deserving a serious refutation." The declaration and instructions will both be found in the 10th Volume of Henning's Virginia Statutes page 548 to 556—and the instructions will also be found entered at large on Journals of Congress of May 21st, 1779. 3 Vol. 281.

Abont the same time, the applicants to the British Crown for a Colony *back of Virginia*, as already explained, and who claimed to own the country by virtue of a cession of it, to them, by the Fort Stanwix Treaty of the 5th of Nov. 1768, petitioned Congress for a confirmation of their rights, and to be allowed to form a State between the Allegheny and the Ohio above the mouth of the Scioto. See Jonrnal of Congress of Sept. 14th, 1779. 3 Vol. 359. On the 14th of December 1779, the Legislature of Virginia sent a remonstrance to Congress, in answer to this petition and also to the declaration and instructions of Maryland, protesting against the jurisdiction of Congress over the subject, and basing her claim to the Western territory on the Virginia charter, and her State Constitution. See 10 Henning's Stat. 559. The Fort Stanwix Treaty will be found in the appendix to Butler's history of Kentucky, page 390.

When Maryland had accused Virginia of ambition—of having adduced neither argument nor evidence of claim "deserving a serious refutation"—when she had solemnly declared that she would not accede to the confederation unless this pretension was abandoned—when the deepest anxiety was felt that Maryland should accede to the confederation and put the government into motion—when she stood out on this point alone—when the destiny of the Republic was suspended on it, and ready to fall—when Virginia therefore had every motive, in reply to Maryland, who felt herself aggrieved, to make such an exhibition of her rights as would satisfy the complaints of a sister State, and we find her putting forth on that remonstrance, no other foundation of claim than this charter, have we not a right to presume she had none other? This declaration of Maryland, it will be noticed, required all the States setting up claims to the Western country to relinquish them to the United States as the condition of her coming into the confederacy. In this critical state of things, when nothing but this controversy prevented the ratification of articles of confederation—an act so indispensably necessary to the prosecution of the War—to the success of the Revolution and the security of American freedom,—the State of New York which claimed the whole Wes-

tern country West of the mountains, instead of remonstrating, yielded to the request of Maryland, and with a magnanimity that entitles her to lasting gratitude, surrendered up her rights on the altar of her Country by passing an act in February 1780, authorising her delegates in Congress by deed of conveyance to the United States to restrict the Western limit of that State "as they should judge expedient." This act bears the honorable and parriotic title of "An act to facilitate the completion of the articles of confederation and perpetual union among the United States of America." See act at large in Journal of Cong. of March 1st, 1781. 3 Vol. 582.

The act of New York, the declaration and instructions of Maryland, and the remonstrance of Virginia were all referred to a committee of Congress, who made a report thereon. On the 6th of Sept. 1780, their report was taken up and adopted.

As that report laid the foundation for the compromise that was finally made of this agitating question, and as showing the deep concern felt by Congress on this subject, (about which I have already said it dared not make a decision,) it is entitled to especial attention, as an important historical document. The report was transmitted by Congress to all the States, and as adopted was in these words—viz:—

"That having duly considered the several matters to them submitted, they conceived it unnecessary to examine *into the merits or policy* of the instructions or declaration of the General Assembly of Maryland, or of the remonstrance of the General Assembly of Virginia, as they involve questions *a discussion of which was declined on mature consideration*, when the articles of confederation were debated; nor, in the opinion of the committee, can such questions be *now revived with any prospect of conciliation;* that it appears more advisable to press upon those States which can remove the embarrassments, respecting the Western Country, a liberal surrender of a portion of their territorial claims, since they cannot be preserved entire without endangering the stability of the general confederacy—to remind them how indispensably necessary it is to establish the federal union on a fixed and permanent basis, and on principles acceptable to all its respective members—how essential to public credit and confidence, to the support of our Army, to the vigor of our councils and the success of our measures, to our tranquility at home, our reputation abroad, to our very existence as a free, sovereign and independent people; that they are fully persuaded the wisdom of the respective legislatures will lead them to a full and impartial consideration of a subject so interesting to the United States, and so necessary to the happy establishment of the federal union; that they are confirmed in these expectations by a review of the before mentioned act of the legislature of New York, submitted to their consideration; that this act is expressly calculated to accelerate the federal alliance, by removing, as far as depends on that State, the impediment arising from the Western Country; and for that purpose to yield up a portion of territorial claim for the general benefit." Whereupon *Resolved*, That copies of the several papers referred to the committee be transmitted, with a copy of this report, to the legislatures of the several States, and that it be earnestly recommended to those States who have claims to the Western Country to pass such laws and give their delegates in Congress such powers as may effectually remove *the only obstacle* to a final ratification of the articles of confederation; and that the legislature of Maryland be earnestly requested to authorise their delegates in Congress to subscribe the said articles." See Journal Cong. of Sept. 6, 1780, 3 Vol. 516. 10 Vol. Henning's Stat. 562.

This report shows that when the articles of confederation were debated, Congress had declined any investigation of the merits of the claims set up by the States to the Western Country—that the same thing was now again done from a belief that no conciliation could in that way be had—a course founded upon the evident conviction that no State would yield its claims to another, and that an expression of opinion in favor of one and against the other, would only produce increased exasperation among the States. They therefore held up the example of New York to their imitation, and recommended to them to make liberal surrender of portions of their claims. And while they held out this recommendation of compromise to the States claiming the crown lands, they at the same time, most earnestly appealed to Maryland to come forward and complete the ratification of the articles of Confederation, and thus perfect the union and at the same time forever extinguish the hopes of the common enemy, who as the history of that day evinces flattered himself that a disruption of the States would take place out of this controversy. Maryland moved by this appeal to her patriotism, in the month of January following passed an act (her instructions and declaration to the contrary notwithstanding) authorising her dele-

gates in Congress to accede to the articles of Confederation; but with a protestation that she did not thereby yield any of her rights to the back country; declaring that she did this because it had been said, that by her not acceding to the Confederation the common enemy was encouraged to hope that the Union of the Sister States would be dissolved, and that the enemy prosecuted the war "in expectation of an event so disgraceful to America;" and to destroy forever any apprehension of her friends or hope in her enemies that she would ever again be united to Great Britain, she came into the Confederation, trusting to the justice of the States laying claim to the back Country. The articles of Confederation were accordingly ratified by the Maryland Delegation. See Journal of Congress of Feb'y. 12th, 1781. 3 Vol. 576. And of March 1st, following; 3 Vol. 586.

Virginia likewise participating in the same sentiment of patriotism, in the same month (January 1781) passed an act yielding all her right and claim to the Country North West of the Ohio: but this surrender was clogged with various conditions, of which, one was that the United States should *guarantee* to her all of her remaining territory on the South East side of the River, which included the present States of Virginia and Kentucky.—The acceptance of this Act of Session, was urged upon Congress for more than two years by the Virginia Delegation in Congress, with great perseverance, when in May 1783, it was finally refused by Congress, and a resolution respecting the cession was adopted, of which, I shall have occasion to speak hereafter. To a right understanding of the claim of Virginia, and of the mode in which it was finally compromised, it is necessary to state briefly in this connexion, the grounds on which the refusal of Congress to accept this act of Cession was placed, and the public transactions that preceded and led to it. When this first act of Cession by Virginia was passed, the New York delegation in Congress had not yet carried into execution the discretionary power vested in them by the Act of that State. Connecticut had also passed an Act of Cession of her claims. New York it will be remembered claimed the whole Country beyond the Mountains. The claimants under the Fort Stanwix treaty, who, as already mentioned, were petitioning Congress for a confirmation of their rights and to erect a new State, insisted on their title to all the present Western Virginia, and part of Kentucky. It will thus be perceived, Virginia required from the United States as a condition of her Cession of the territory beyond the Ohio River a guarantee of the Country between the Alleghany and the Ohio which was claimed by New York and by those petitioners. The object of this guarantee was to protect Virginia against these claims. The Petition of these claimants, the acts of Cession of New York, of Connecticut and of Virginia, were all referred to a committee of Congress to report thereon. As Virginia required this guarantee, the Committee were of opinion, that to enable them to decide, whether the confederacy ought to enter into such an engagement, it was incumbent on them to examine into the title to the territory on both sides of the Ohio, so that they might act understandingly in the matter. The committee in their report, which will be found at large in the Journal of Congress of the 1st of May 1782, (See 4 Vol. 21,) state that they had a meeting with the Agents of the States of N. York, Connecticut and Virginia—that the Agents of New York and Connecticut laid before them "their several claims to the lands said to be "contained in their several States together "with vouchers to support the same; but the "delegates on the part of Virginia declining "any elucidation of their claim either to the "lands ceded in the Act referred to your "committee, or the lands requested to be "guaranteed to the said State, delivered to "your committee the written paper hereto "annexed, and numbered twenty." That paper is signed by the Virginia Delegation in Congress, of which Mr. Madison was one; and States the reasons, why they declined to comply with the request of the Committee to exhibit before them the evidence on which Virginia vested her claim. It is not printed in the Journal of Congress; but the original Manuscript will be found among the unpublished papers of the Congress of the Confederation in the State Department, in Book No. 30, page 557. It assigns several reasons for their declination, the first and most material of which is in these words, viz: "The acts of "Congress in compliance with which the "above mentioned Cessions (meaning those "referred to the Committee) were made, are "founded on the supposed inexpediency of "discussing the question of right, and recommend to the several states having territorial "claims in the Western Country, a liberal "surrender of a portion of these claims for "the benefit of the United States, as the "most advisable means of removing the "embarrassments, which such questions cre-"ated. To make these acts of surrender "then, the basis of a discussion of territorial

"rights, is a direct contravention of the acts of "Congress, and tends to diminish the weight "and efficacy of future recommendations "from them to their constituents." I shall hereafter have occasion to remark that this paper is important to show how Virginia understood the Acts of Congress in compliance with which the States passed those Acts of Cession. The Committee go on to state that they have carefully examined the vouchers laid before them, and obtained all the information in their power respecting the state of the lands mentioned in the Acts of Cession of New York, Connecticut and Virginia—that they had maturely considered the same, and that for reasons that are stated by them at length, they are of opinion that the *jurisdiction* of the whole territory, owned by the six Nations of Indians and their tributaries *was vested in New York*—that the "colonies of "Massachusetts, Connecticut, Pensylvania, "Maryland and Virginia had from time to "time by their public acts recognized and admitted the said six Nations and their tributaries to be appendant to New York." That "the crown of England had always considered and treated the said Six Nations and "their tributaries inhabiting as far North as "the 45th degree of North latitude *as appendant* to the Government of New York.—"That by accepting this Cession (that of New "York) the jurisdiction of the whole Western "Territory belonging to the Six Nations and "their tributaries will be vested in the United "States greatly to the advantage of the U"nion." Congress in pursuance to this recommendation did accept the New York Cession. The territory of the Six Nations of Indians extended on both sides of the Ohio as far West as the Wabash and Tennessee rivers, the latter of which was at the date of the Treaty of Fort Stanwix called the Cherokee river. See Butler's history, appendix, page 392. While these cessions were before Congress, and in the hands of this Committee, Mr. Madison, on the 13th of Nov. 1781, wrote to Mr. Edmund Pendleton, that he believed the Virginia Cession with the conditions annexed to it would not be accepted by Congress. That it seemed to be the opinion in that body that an acceptance of the Cession of New York would give the United States a title that would be *maintainable against all the other claimants*. 1 Vol. Madison papers page 101.

As to the Virginia Act of Cession, the Committee say, "that it appeared to them "from the Vouchers laid before them, that "all the lands ceded or pretended to be *ceded* "to the United States by the State of Virgin"ia, are within the claims of the States of "Massachusetts, Connecticut and New York, "being part of the lands belonging to the "Six Nations of Indians and their tributa"ries." That "it also appeared that great "part of the lands claimed by the State of "Virginia and requested to be *guaranteed* to "them by Congress is also within the claim "of the State of New York, being also a "part of the Country of the said Six Na"tions of Indians and their tributaries."—They conclude by declaring that "the condi"tions annexed to said cession are incompat"iblo with the honor, interests and peace of "the United States, and therefore in the "opinion of the Committee altogether inad"missible."

This report was debated in Congress from time to timo, till the 4th of June 1783. Repeated efforts in various forms, were made by Virginia to obtain the acceptance of this act by Congress; but without success.—The letters of Mr. Madison, then a member of Congress, written during this time, to be found in the Madison papers, abundantly testify to the deep solicitude and anxiety felt by him and his colleagues on this important subject. It ought here to be borne in mind, that the States which held that the Crown lands were the property of the nation, strenuously resisted the acceptance of this Act of Virginia chiefly on the ground, that it permitted that State to retain the country between the mountains and the Ohio river; which they denied Virginia had any title to. And it certainly is very difficult to show that she had any more title to that, than to the country beyond the river. Various votes had been taken in Congress, which were regarded as equivalent to the rejection of this Act of Cession; when finally on the 4th of June 1783, on motion of Mr. Bland of Virginia, so much of the former report as related to that act, was referred to a Committee of five, of whom Mr. Madison was one, and Mr. Ellsworth of Connecticut, afterwards Chief Justice of the Supreme Court of the United States, was another. Immediately on this reference to the last mentioned committee, the States which had opposed the acceptance of the Virginia Act of Cession and looked upon it as rejected by Congress, took it up anew. The Legislature of New Jersey in particular, which had constantly protested against permitting Virginia to retain the territory between the mountains and the Ohio, ten days only after this last reference passed new resolutions on the subject. They com-

mence with expressing their surprise that Congress after its former proceedings should again have taken up the subject of the Virginia Act of Cession, and setting forth their objections to it they conclude by saying: "We "cannot be silent while viewing one State aggrandizing herself by the unjust detention "of that property, which has been acquired "by the common blood and treasure of the "whole, and which on every principle of reason and justice is vested in Congress for the "use and general benefit of the Union they "represent. They doubt not the disposition "of Congress to redress every grievance that "may be laid before them, and are of opinion "there can be no greater cause of complaint, "nor more just reasons for redress than in "the present case. They do therefore express their dissatisfaction with the cession "of Western Territory made by the State of "Virginia in January 1781, as being far short "of affording that justice which is equally "due to the United States at large, and request that Congress will not accept of the "said cession; but that they will press upon "the said State to make a more liberal surrender of that territory of which they claim "so boundless a proportion." See Journal of Cong. June 20th, 1783. 4 vol. 231.

The last Committee made a report which was finally acted upon and adopted on the 13th of Sept. 1783. See Journal of that day, 4 vol. 265.

As was the case when the Articles of Confederation were discussed, and again when the recommendatory resolution of the 6th of September, 1780, was adopted, already stated at large, so now the committee, in pursuance of the settled policy then decided upon, abstained from making any enquiry into the title of Virginia to any part of the country on either side of the Ohio; but took up the several conditions contained in the Act of Cession, giving to each of them a distinct consideration, approving some and rejecting others, and laying down the terms on which they would recommend to Virginia to make, and the United States to accept a cession. On the subject of the last condition, which was the proposed guarantee of the country on the South-East side of the Ohio, the Committee say, "as to the last condition, your committee "are of opinion, that Congress cannot agree "to guarantee to the Commonwealth of Virginia, the land described in the said condition, *without entering into a discussion of the "right of Virginia* to the said land; and that "*by the Acts of Congress*, it appears to have "been *their intention*, which the committee "cannot but approve, *to avoid all discussion "of the territorial rights of individual States*, "and only to recommend and accept a cession "of their claims, *whatsoever they might be*, to "vacant territory. Your committee conceive "this condition of a guarantee to be either "unnecessary or unreasonable; inasmuch as, "if the land above mentioned is really the "property of that State, there is no reason or "consideration for such guarantee. Your "committee, therefore, upon the whole, recommend that if the Legislature of Virginia "make a cession conformable to this report, "Congress accept such cession." This report, after its adoption, was transmitted to Virginia, whose Legislature, on the 20th of the next month, (Oct. 1783,) passed an Act of Cession of the country beyond the Ohio, in conformity to the terms thus recommended by Congress, which was accepted by the U. States on the 1st of March, 1784. See Jour. of Cong. of that day, 4 Vol. 342.—1 Vol. Laws U. S. 472. Thus, at length, was terminated, peacefully and happily, this long agitated and perilous controversy. This second Act of Cession begins by referring to the last mentioned report, and accedes to the terms recommended by Congress. And thus that report, and all the acts of Congress referred to in that report, as evidencing the policy Congress had adopted, and then adhered to, in regard to the claims of the States, are, in fact, made a part of the Act of Cession, by this reference, as much as though they were recited at large in the Act, and are to be regarded as part of it, in fixing its interpretation and legal effect. The result of the whole arrangement was, that Virginia surrendered up the country beyond the Ohio to the Confederacy, and the United States left Virginia in the quiet possession of the country between the mountains and the river, to which they set up a claim in their own right, and as assignees of New York. It is thus an undeniable fact, that a transfer of the claim of Virginia was accepted, *for whatever it might be*, good or bad, without examination by the United States into its merits, or production of proof of its validity by Virginia, which by the express understanding of both parties was waived.

This closes the legislative and documentary history of the title of Virginia; and keeping it in view, we are now prepared to present, in an intelligible form, the distinct question, upon which the claim now set up by Virginia to the *whole river* must turn. The principle of the law of nations already adverted to, as laid down by the Supreme Court of the United

States, in the case of Handley's lessee *vs.* Anthony, 5 Wheat. 379, is "that where a great river is a boundary between two nations or States, if *the original property is in neither*, each holds to the middle of the stream; but when one State is the original proprietor, and grants the territory on one side only, it retains the river within its domain; and the newly erected State extends to the river only." I have already, by reference to the law of nations, shown that it leans strongly in favor of an equitable partition of the river, and will hold the Nation or State that sets up an exclusive right to the whole, to clear and conclusive proof of title. Virginia sets up such a claim, and of course takes upon herself the burthen of proving that she had a clear right to the country on both sides of the Ohio.—And here the question presents itself, has Virginia made, or can she make, clear and conclusive proof, that, prior to the Act of Cession, she had title to both or to either side of the river? I shall not repeat what I have already said on that head; but there is strong cotemporary inferential proof that Virginia had no title or claim except what was founded on the Virginia charter of 1609, to which I will briefly advert. It will be recollected that as early as 1778, the claims of the State of Virginia to the western country, had been vigorously assailed in Congress, and by other States of the Confederacy. Her pretensions had been denounced as unfounded, unjust and ambitious. Against this denunciation, Virginia had remonstrated to Congress as early as 1779. All this was calculated to put her people, and especially her public authorities, upon enquiry and examination into the evidences and proofs of her title to the country in dispute. Nor was she wanting in this duty to herself. When the Committee to which the first Virginia Act of Cession was referred, with those of New York and Connecticut, made their report in favor of the acceptance of the act of New York, and the rejection of that of Virginia, as already explained, Mr. Madison wrote to Mr. Jefferson, giving him a detailed account of the proceedings of the Committee, and of the course pursued by the Virginia delegation in Congress, and urged him to collect the documentary evidence necessary to enable them to meet the objections raised against the title of Virginia. 1 Vol. Madison papers, 106. It appears from that and other letters in the same volume, that other distinguished gentlemen were applied to for similar aid. Three months later, he again writes to Mr. Jefferson a very urgent letter on this subject, [1 Vol. Madison papers 119,] which commences with this passage; "I entreat that you will not suffer the chance of a speedy and final determination of the territorial question by Congress, to effect your purpose of tracing the title of Virginia to her claims." He tells him that in every event, it is proper to be armed with every argument and document that can vindicate her title; and informs him that in all probability, in addition to her own claim of title, the Confederation would fortify herself with the title of New York, which State, he says, set up a claim to all the territory in dispute. He then proceeds to inform him in detail by what arguments the title of New York will be supported, and that of Virginia opposed. As already mentioned, he about the same time, in a letter to Mr. Pendleton, (1 Vol. 101,) says it seemed to be the prevailing opinion, that the Cession of New York would give Congress a title which would be maintainable against all other claimants. It is true that Mr. Madison, in all these letters, expresses confidence in the validity of the Virginia claim. But it is equally certain, that though this controversy was kept up for four or five years, with great excitement about it, both in Congress and in the States, till the passage of the Compromise resolution of the 13th of September, 1783, the Virginia delegation in Congress were all that time at a loss to know on what ground, other than that of the old charter, to rest her claim to the country. The Madison papers do not show that by their own researches, or those of their friends, the Virginia Delegation were ever able to exhibit any other documentary proof of title. Nor can I discover, on looking into Mr. Jefferson's correspondence, that he was ever able to trace out a title for Virginia, or that he or others engaged in the same work, found any thing of any value to support it, not before well known to the public. Nor has the learned Counsel for the Commonwealth now been able to exhibit any new proof of title not familiar to all at the period of the controversy.

I think from what has been said, it may now confidently be asserted that Virginia had no title to the country West of the Alleghenny Mountains, certainly no such clear and conclusive proof of title, as the law of nations requires her to make, as the sole condition on which she can sustain, as against Ohio, an exclusive right to the whole river. But here it may be, and has been said, that the deed of Cession admits title in the grantor—that the United States and all claiming under them are estopped from going behind it to enquire

into the original right. This objection places a great public question upon the narrow basis of a mere legal technicality. When refuge is taken behind it, what was said by the Supreme Court in the case of Handley's lessee vs. Anthony, already cited, may be applied with much force, that "in great questions which *concern the boundaries of States*, where great national boundaries are established in general terms, *with a view to public convenience and the avoidance of controversy*, we think the great object where it can be distinctly perceived, *ought not to be defeated by those technical perplexities*, which may sometimes influence contracts between individuals." But if it be admitted that the doctrine of estoppels is recognized by the law of nations, as applicable to a treaty, deed or Act of Cession by one independent sovereignty to another, still it would not be applicable to this deed of Cession. If this were a mere naked deed of cession or conveyance of the country, without reference to any extrinsic or antecedent fact, the question would fairly and fully arise whether the law would permit either party to resort to the antecedent or extrinsic facts, which induced one party to make and the other to accept the deed for the purpose of putting a construction on it. But if the deed contains recitals of facts or motives, or references to them, then the facts thus recited or referred to, become a part of the deed, and we have an undoubted right to look into the facts to which reference is made, and give them the same weight and effect as though the matter referred to were incorporated into the instrument at large.—Now this deed of Cession is of the latter class, and begins by reciting in full the Act of Assembly of Virginia of the 20th of October 1783, which empowered her Delegates in Congress to execute the deed. That act is not only a part of the deed, but it is the sole authority on which the validity of the deed rests. It is what is commonly called the power of attorney to make the conveyance. That Act of Assembly thus recited at large, in the deed, begins by a recital of facts and of the motives that induced the Legislature to pass it. And for its motives it refers to certain public acts or transactions which being referred to, we have a right to look into, and treat as a part of the deed. The first public act thus referred to, is the resolution of Congress of the 6th of September 1780, recommending to the States setting up claims to vacant lands, to make cessions of them to the confederacy.

I have already shown that when that resolution was passed, as well as prior to that time when the articles of Confederation were debated, Congress decided that they would not enquire into the *validity* of the claim of any State; but that instead of such enquiry, they proposed the States should by way of compromise one and all convey their claims, such as they might be, to the Confederacy, and in that way quiet the title and settle the controversy among the States about the crown lands. I have also shown that it was on that express ground that two years afterwards Virginia declined to exhibit before a Committee of Congress her title to the country on the East side of the Ohio, which by her first Act of Cession she required Congress to guarantee to her, insisting that the resolution of 1780, in compliance with which she passed her first as well as second Act of Cession, was founded on the very basis that no enquiry into the right or title of any State was to be made. The Committee, on the contrary, thought that case formed an exception to this understanding, and that if Virginia required a guarantee of country which she did not cede, that Congress ought to look into her title before becoming responsible for it.—In the next place; the Virginia act recited in the deed, refers to the proceeding of Congress of the 13th of September, 1783, which thus becomes in law a part also of the deed. That proceeding, or *Act* of Congress, as it is called in the Virginia law, was nothing more nor less than a report of Congress which has been already presented at large.—It was a report coming from a Committee of which Mr. Madison, we have seen, was one, upon the first Virginia Act of Cession, rejecting it, and explaining to Virginia the reasons for not accepting that Act, and setting forth the terms on which the Confederacy would accept a cession from that State. That report re-iterates and declares what the Delegates of Virginia had before insisted upon as a basis of a compromise, "that by the Acts of Congress it appears to have been their intention, which the Committee cannot but approve, to avoid all discussion of territorial rights of individual States, and only to recommend and *accept* a cession of their claims, *whatsoever they might be*, to vacant territory." The Act of Virginia then goes on to declare, that she passed it in conformity to this recommendation of Congress. In view of these facts, thus made, by recitals and references, a part of the deed of Cession, how is it possible for Virginia to say that Congress, by accepting the deed of cession, admitted her title to be good? Might not the same claim, with equal propriety, be set up in favor of the Cession of New York, Mass-

chusetts, and Connecticut, who also became parties to this same compromise, and ceded their claims in response to the same resolutions of Congress! The cession of all put together make one great result—one whole—*one compromise* of conflicting pretensions. It may be further added, that as the last Act of Cession refers to the report of Congress of 1783, to show what motives governed Virginia in passing it, and as that report, in its turn, refers in general terms to the prior acts of Congress on that subject, to show their intention, the whole body of the prior proceedings of Congress are thus, in fact, laid open to our examination, and we have a right to look into them all in giving to the deed of Virginia its legal effect. I shall hereafter state what the law of nations defines a compromise to be. I shall, for the present, assume that the Cession of Virginia, and of the other States, was the result of a compromise, in which, in accepting the cession, the validity of the title of no one of the ceding States was admitted, or intended to be admitted, by the Confederacy; but the contrary was expressly declared and understood, as one of the terms and conditions of the arrangement. It follows from this, that in all controversies about the title to the country that was in dispute, (being all West of the Alleghanies,) we are bound either to look to this compromise as the origin and basis of the title, or if not, then we are at liberty to go back into the prior title, without regard to the cession. I have already shown that Virginia had no title prior to that time, and will not repeat what has been said on that subject. In my opinion, the compromise is the foundation of the title, and both parties are precluded from going back of it to enquire into the prior claim. The deed of cession is to have a legal effect and operation, according to the terms of the compromise, and the understanding of the parties at the time it was entered into. Both parties to the cession claimed to own the country on both sides of the Ohio. Both expressly agreed that the title of neither should be enquired into by the other —that no decision should be made or opinion expressed by either as to the goodness of the title of the other. That the dispute should be settled by leaving Virginia in possession of the territory on one side of the Ohio, the United States taking that on the other side of the river. Before that time, both set up a *claim*, but neither had an *admitted title* to either side of the river. In this view of it, the title to each side of the river is co-eval with the other. Neither can assert a prior title, and as the parties then agreed they would not look into the validity of the title of either, both are bound by the agreement, and must live by it. If the title on each side of the river be co-eval, I will show hereafter where the law of nations will fix the boundary, after having shown what that law defines a compromise to be.—"Compromise "is a method of bringing disputes to a peace- "able termination. It is an agreement by "which, without precisely deciding on the "justice of the jarring pretensions, the par- "ties recede on both sides, and determine "what share each shall have of the thing in "dispute, or agree to give it entirely to one "of the claimants on condition of certain in- "demnifications granted to the other." (Vattel's Law of Nations, Book 2, Chap. 18, Sec. 327.)

The first of the two modes of Compromise here stated by Vattel describes with perfect accuracy the condition of the parties to this dispute and their manner of settling it. The Confederacy in its own right and as the grantee of New York claimed the whole Country West of the Mountains on both sides of the Ohio. Virginia claimed the same.—"Without precisely deciding on the justice of their jarring pretensions the parties recede on both sides, and determine what share each shall have of the thing in dispute." Where indeterminate rights are thus rendered definite and a dispute afterwards arises about them, common sense and the plainest necessity dictate that both parties must be referred back to the Compromise, that is to say, to the time when the right was rendered definite and no further—to go back of it is to undo the Compromise, render it a nullity and again involve the parties in the very difficulty which it was the aim and end of the compromise to avoid. Mr. Madison was for a long time earnestly engaged in endeavoring to bring about a Compromise of this dangerous dispute and the Country owes him an infinite debt of gratitude for his labours in so good a cause. This is evidenced not merely by his course in Congress, but the Madison papers, show that he had it near to his heart and remained in Congress to effect it. In a letter to Mr. Edmund Randolph written on the 10th of Sept. 1782, he says, "every review I take of the Western Territory produces fresh conviction that it is the true policy of Virginia as well as of the United States *to bring the dispute to a friendly compromise.*" It was the next year terminated in the mode he desired. The application to this state of facts of the principle already so fully established that

"where a great river is the boundary between two nations or States, if the original property is in neither, and there be no convention respecting it, each hold to the middle of the stream" is both easy and unavoidable. It is also just and equitable, promoting the convenience of all and doing injury to none. I will now bring this long argument to a conclusion, by remarking that the channel of the river must have been understood to be the boundary at the time of the arrangement. One of the very first and immeasurably the most important act ever passed by Congress respecting the ceded territory puts a practical construction on the cession wholly irreconcileable with the claim now set up by Virginia to the whole river. In the celebrated ordinance of 1787 for the erection of a government in the Territory North West of the Ohio, it is not merely declared, but made an article of Compact between the people of the Territory and the people of the United States, irrevocable except by common consent, that "the navigable waters leading into the Mississippi "and St. Lawrence and the carrying places between the same, shall be *common highways* and forever free, as well, to the inhabitants of said territory, as to the citizens of "the United States, and those of any other "States that may be admitted into the Confederacy, without tax, impost or duty therefor." (1 Vol. Laws U. S. 479.)

It is plain that ordinance was intended to embrace the Ohio. It has always been so understood. Men of tender consciences, and having constitutional scruples, have in these latter days voted appropriations to clear out and improve the navigation of the Ohio, on the express ground that this compact had imposed a duty on Congress and given it a power over the river, which it does not possess over rivers not embraced by the ordinance. Indeed it is the principal river included within the terms "the navigable waters leading into the Mississippi." If the Ohio do in fact belong exclusively to Virginia, then it is plain, this compact so far as that great river is concerned is as much a nullity, as though the ordinance had undertaken to regulate the navigation of the James or any other river within the admitted territory of Virginia. Considering the very great importance of this regulation, and the care with which it is inserted into the ordinance, not as an ordinary act of legislation merely; but put, on account of its weight and consequence, above all future repeal or alteration by Congress alone, it is not a little remarkable, if Virginia owned the river, that this ordinance was reported by a member from Virginia, and came from a committee of five, of whom two were from that State,—that on its passage the name of every member from Virginia is found recorded in favor of it, and indeed of the whole Congress, with one solitary dissenting vote from the State of New York.—If at that early day, it had been understood Virginia owned the whole river, that ordinance could not have passed with such extraordinary unanimity, much less with the entire vote of Virginia for it. I now leave the case, with a firm conviction, that the claim now set up in behalf of Virginia cannot be maintained—that it is not for her interest it should be—that it would be of no benefit to her, and of much injury to Ohio, and with a like firm persuasion that this enlightened Court will render a decision according to the law of the land, and such as shall best promote the peace, harmony, convenience and common welfare of the people of both communities.

[The publisher, in justice to Mr. Vinton, deems it proper to say, that that gentleman has had no opportunity of reading the proof sheet of this Argument. Great care has been taken to have it free from typographical errors, but it is still possible that some may be found.]